IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.574 OF 2006
IN
NOTICE OF MOTION NO.3622 OF 2000
IN
SUIT NO.5151 OF 2000

Smt.Vijaya S. Keni & Anr. ....Plaintiffs
V/s.
Laxman Mahadev Vatandar & Ors. ....Defendants

Mr.S.U. Kamdar, Senior Counsel i/b M/s.Chitnis Vaithy & Co. for the Plaintiffs.
None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH SEPTEMBER, 2006.

P.C. :

1. The Plaintiffs, Defendant Nos.1, 2 and 7 are the owners of the suit property. The Plaintiffs are brother and sister. They therefore have 1/5th share each in the property. Mr.Kamdar, the learned Senior Counsel appearing on behalf of the Plaintiffs states that 1/5th share of each of the two Plaintiffs is admitted. He states that there is no dispute whatsoever by any of the Defendants in regard thereto.

2. The suit challenges a development agreement entered into in 1990 by the Plaintiffs and Defendant Nos.1, 2 and 7 on the one and Defendant Nos.3 to 6 on the other. The Plaintiffs' case is that they signed

the agreement without having been informed the effect thereof. Mr.Kamdar states that even assuming that the suit fails, the Plaintiffs would be entitled to the benefits under the said agreement that is inter-alia of a flat each.

3. By an order dated 1.2.2001 in Notice of Motion No.3622 of 2000 filed by the Plaintiffs, the developers i.e. Defendant Nos.4, 5 and 6 made a statement that no third party rights would be created in four flats mentioned in the order itself. The fifth co-owner it is stated is not entitled to a flat under the said agreement in any event. Flat Nos.B-201 and B-301 were said by Defendant Nos.4, 5 and 6, to be in the names of Plaintiff No.2 and Plaintiff No.1 respectively.

4. Based on the aforesaid statements, there is no reason why the Plaintiffs should not be entitled during the pendency of the suit to use, occupy and enjoy the said flats. That is the least that they would be entitled to even if they fail in the suit.

5. In the circumstances, the following order is passed :-

i). The Court Receiver, High Court, Bombay is

appointed as Receiver of flat Nos.B-201 and B-301. The Court Receiver shall put Plaintiff Nos.1 and 2 in possession of flat Nos.B-201 and B-301 respectively without security or royalty as his agents. The Plaintiffs shall pay all outgoings and taxes including the arrears in respect of the said flats.

6. The Notice of Motion is accordingly disposed of.